

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,	)	Application No. NG-0035/PI – 115
on its own motion, seeking to	)	
investigate the interactions	)	
among aggregators, suppliers and	)	
jurisdictional utilities	)	
operating a customer choice	)	
program.	)	

### COMMENTS OF THE PUBLIC ALLIANCE FOR COMMUNITY ENERGY ("ACE")

By its May 2, 2006, order opening a docket and requesting written comments, the Nebraska Public Service Commission ("Commission") is investigating the interactions among aggregators, suppliers, and jurisdictional utilities operating a customer choice program.

The Public Alliance for Community Energy ("ACE") submits the following comments for the Commission's consideration regarding the interactions among aggregators, suppliers and jurisdictional utilities operating a customer choice program. ACE supports the Commission's efforts to ensure that the interactions among certificated aggregators, suppliers, and jurisdictional utilities operating a customer choice program are both consistent and fair.

### BACKGROUND

ACE is a municipally owned retail supplier in the Kinder Morgan Choice Gas Program in Nebraska. ACE, formed in February 1998, consists of 67 communities and one public power district that have joined together to become retail suppliers of natural gas. These communities are seizing an opportunity to help their citizens save money by participating in the Kinder Morgan Choice Gas Program. ACE is committed to offering the lowest possible prices to its customers. It has a core philosophy of local control. ACE is the only community-owned gas supplier under the Program and has participated

in the Kinder Morgan Choice Program for the past eight years. ACE is a part of the NMPP Energy family of organizations.

NMPP Energy is a joint action agency headquartered in Lincoln, Nebraska and is composed of four entities: Municipal Energy Agency of Nebraska (MEAN), a wholesale electricity supply organization; National Public Gas Agency (NPGA), a wholesale natural gas supplier; Public Alliance for Community Energy (ACE), a retail natural gas supplier, and the Nebraska Municipal Power Pool (NMPP), a utility-related services provider. Established in 1975, NMPP Energy provides these and many other services to approximately 200 member communities in Nebraska, Colorado, Kansas, Wyoming, Iowa, North Dakota and Wisconsin.

**a. Whether the Commission should promulgate rules and regulations to address the relationship between aggregators and suppliers in a customer choice program? If so, what issues should be addressed?**

ACE supports the promulgation of limited and focused rules and regulations or guidelines regarding aggregation, however the “relationships” are largely commercial in nature and therefore need to be based on contractual terms and conditions. ACE believes that guidelines will help to ensure that the interactions among certificated aggregators and suppliers are both fair and consistent. ACE did not feel that interactions among suppliers and certificated aggregators were fair and consistent during the most recent selection period. The Commission should further clarify that certificated aggregators are under the general Competitive Natural Gas Provider rules. Issues to be addressed in these guidelines are outlined below.

## **Code of Conduct Issues**

ACE believes that certificated aggregators should be required to follow the Code of Conduct established in the Kinder Morgan Choice Gas Program. The Code of Conduct outlines general rules for doing business within the service area. ACE believes the Code of Conduct should be applied consistently to all.

ACE believes that during the past Choice Gas selection period ACE was blindsided by a new certificated aggregator. RnD Energy, LLC ("RnD") did not contact ACE until the first day of the selection period. On the first day, RnD requested a bid without first laying out their business terms, practices, or expectations. RnD had prior business contact with the other two Nebraska suppliers (ONEOK Energy Marketing Co. and Kinder Morgan Choice Gas Supply) from their operations in the Wyoming Choice Program, in which ACE does not participate. Upon ACE's request for and receipt of RnD's commercial terms, RnD expected that ACE would agree to commercial terms and submit a bid for their accounts within one day. This was clearly not sufficient time for ACE to carefully assess the consequences of the proposed terms and coordinate these terms with appropriate leadership personnel. To avoid future conflicts and ensure consistent and fair treatment among suppliers, ACE suggests establishing a guideline with the Choice Gas Program Administrator that addresses the timeframes for certificated aggregators' offerings prior to the selection period.

## **Bidding Rules Issues**

ACE requests that the Commission or the Choice Gas Program Administrator establish bidding rules. The rules should require that bids be taken at the same point in time. ACE believes that a fair comparison of prices is not available when an aggregator takes prices from different suppliers at different times, due to the fluctuations in the market. It is unfair to take a price from one entity at the open of the market, another from another entity at the peak of trading, and the price from the final entity at the close of the day. There is no way to establish a fair comparison when bids are taken at inconsistent times.

## **Advertising & Marketing Issues**

ACE urges the Commission to require certificated aggregators to adhere to and recognize Nebraska laws and values. Deceptive trade practices will not be tolerated. Advertising and marketing done by certificated aggregators and suppliers should not be done in a manner that displays any of the parties in an unjust negative light. It came to ACE's attention that prior to the campaign, individuals had been disseminating unwarranted negative information about natural gas providers in the Kinder Morgan Choice Program. ACE believes the Commission should prohibit unfair trade practices to prevent actions such as this from occurring in the future.

### **b. Whether a natural gas supplier can refuse to negotiate with a duly certificated and recognized aggregator on the grounds of fitness to perform the service of an aggregator.**

ACE believes that a natural gas supplier can refuse to contract with a duly certificated and recognized aggregator on the grounds of "commercial" fitness and other grounds. "Commercial" fitness should be based on contractual terms and business policies core to the operations of the certificated aggregators and suppliers.

ACE also believes that an aggregator may be fit when they appear before the Commission for certification, but due to business practices and changing conditions a certificated aggregator's fitness may deteriorate over time. The question of fitness is one that should always get a fresh look when one is in a business relationship. It is only fair to evaluate a certificated aggregator's fitness each time one decides whether or not to contract with them.

The decision not to provide a bid to a certificated aggregator based on business or commercial terms is not the same as refusing to offer supply to a customer. Generally when a natural gas company offers supply to a customer, they have an agreement to provide gas supply, without additional caveats or fees. This was not the case initially with the certificated aggregator during the past Choice Gas selection

period; therefore, the most straightforward and nondiscriminatory approach of offering gas supply to the customers represented by the certificated aggregator was to offer ACE's published residential prices.

During the past campaign, ACE initially questioned RnD for several reasons. As stated by Ms. Stetler in her correspondence with Ms. Demman on April 21, 2006,

"ACE's business decision not to submit a bid to RnD was as a result of RnD's proposal being inconsistent with ACE's Core Mission. ACE works very hard to cut overhead and offer all customers the lowest possible price. We believe that it is not in the best interest of the customer to add another layer of costs to ACE's published price. RnD Energy is welcome to purchase from ACE at our published residential prices."

ACE was initially concerned about working with RnD because it would have required ACE to deal only on RnD's terms. In addition, there were several other aspects of ACE's business model that were not taken into consideration by RnD. For example, ACE has a policy of not blending commercial and residential customers together because ACE does not have the infrastructure necessary to blend both classes of customers. ACE also does not price natural gas on volume, but rather places the emphasis on load factor, or when the gas is actually used throughout the year.

Eventually, ACE and RnD worked together to bring competitive pricing to a small group of commercial clients. This fact was never reported in the media. These commercial users were separated from the residential users, and ACE did not pay a fee to RnD. Once RnD and ACE worked together in a manner that was consistent with ACE's business model, it was possible for ACE to supply competitive price quotes and win the bid for a small group of commercial customers represented by RnD.

**c. Whether failure to honor a customer's choice to use an aggregator's services in a choice gas program constitutes a violation of the non-discrimination clause of the Code of Conduct contained in Kinder Morgan, Inc.'s September 8, 2004 Nebraska Gas Tariff Section 38.2E.**

RnD contacted ACE for a bid on their commercial and residential users, which were aggregated together. ACE informed RnD that it was inconsistent with ACE's business practices to aggregate residential and commercial customers together. RnD was informed that if they separated the residential from the commercial customers, ACE would be willing to offer RnD the same prices as if the customers had approached ACE directly.

After the initial contact by RnD, ACE contacted Kinder Morgan Choice Gas, the Program Administrator, to determine if failure to offer a bid to a certificated aggregator would be a violation of the Code of Conduct. ACE felt it was important to consult the Program Administrator before taking future action, as ACE is committed to abiding by the provisions set forth in the Code of Conduct. In correspondence with Ms. Stetler on April 20, 2006, Mr. Van Dyke, Director of the Retail Division of Kinder Morgan stated,

"I would concur with your understanding that a Participating Supplier in the Choice Gas Program may decide whether or not to submit a bid to an Aggregator in a given factual situation. The situation you described where a Participating Supplier is not willing to offer price quotes via a bid request by an Aggregator tied to paying the Aggregator a fee, because doing so (in the judgment of the Participating Supplier) would not be in the best interest of a customer, appears to me to be within the discretion of the Participating Supplier, when acting in good faith, and consistent with the Code of Conduct."

After receiving the opinion of the Program Administrator, ACE decided not to contract with the certificated aggregator, under their proposed terms.

**d. Whether aggregated pools of customers should be offered bids when not represented by a certificated aggregator.**

ACE believes that aggregated pools of customers should be offered bids when not represented by a certificated aggregator. ACE believes that there is a difference between certificated aggregators and aggregated pools of customers. Certified aggregators work for a fee. Aggregated pools of customers are generally retail end-users requesting a bid for their own private use or pools of like-minded joint businesses that operate together to economize and reduce time in soliciting bids. These aggregated pools of customers do not make a profit on the transaction.

The obvious question is: Why does ACE allow aggregation for businesses and not for residential users? The answer is that ACE's prices are primarily based on load factor (that is, when the gas is used), not volume. ACE's business model strives to offer the lowest prices it can to residential users. ACE strives to be consistent and fair to its customers. However, different businesses have different load factors. Certain businesses use more gas during certain seasons than others. By pooling together, often times these commercial accounts can stabilize their usage throughout the year and improve their overall load factor.

## **SUMMARY**

ACE believes the best way to have an effective system, where certificated aggregators and suppliers can work together, is if the Commission ensures that interactions among suppliers and certificated aggregators are fair and consistent. The best way to do this is to establish guidelines that are limited and focused on the issues discussed.

DATED this 2nd day of June, 2006.

Respectfully submitted,

  
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